IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

Bail Appl..No. 5305 of 2007()

CRIME NO.4/06 OF MALOOR POLICE STATION

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PETITIONER/4TH ACCUSED

CHALIL SAMEER, S/O. MUHAMMED,
AGED 28 YEARS, THAHIRA MANZIL, SIVAPURAM.

BY ADV. SRI.C.KHALID
SRI.T.P.SAJID

RESPONDENTS: COMPLAINANT

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1. CIRCLE INSPECTOR OF POLICE,
MALOOR POLICE STATION, MALOOR, KANNUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
GOVERNMENT PLEADER, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5305 of 2007

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Dated this the 4th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Sections 3 and 5 of the Explosive Substances Act. According to the petitioner, the person really arrayed as accused is one Sameer, an autorikshaw driver. He is named in the earliest document. But subsequently succumbing to political pressure on behalf of the said Samer that Sameer has been deleted from the array of accused and the petitioner, an innocent Sameer, has been arrayed as the accused. In these circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner.

2. The learned Prosecutor, on instructions, submits that Investigation is now complete. Investigators have come to the conclusion that the petitioner is the real accused person referred to by the informant in the F.I. statement. Final report has already been filed. The petitioner is not now required to be arrested by the police. He will have to appear before the learned Magistrate and seek bail.

In these circumstances there is no necessity to issue any direction under Section 438 Cr.P.C., submits the Prosecutor.

3. I find merit in the submissions of the learned Prosecutor. Investigation having already been completed and final report having already been filed, it is for the petitioner now to appear before the learned Magistrate and seek regular bail in the ordinary course. I find no reason to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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